

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2533 of 2018(O&M)

Date of decision: 7.2.2020

Jaswinder Singh and others

.....Appellants

VERSUS

Narender Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Saurabh Kapoor, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of Rs.4 lakhs based upon agreement to sell dated 23.02.2006 has been decreed by the trial Court vide decree and judgment dated 30.10.2013 that came to be affirmed in appeal by the Additional District Judge, Yamuna Nagar at Jagadhari vide judgment dated 30.10.2017.

The sole submission made by counsel for the appellants is that on 23.06.2006, a writing was prepared on the reverse of first page of agreement marked as Ex.P3 whereby it was agreed that registry would be got executed within 7 days from the date of preparation of all legal documents. It is argued that in terms of the agreement, the appellants had got closed all doors and windows at their own expenses. They issued

notice dated 27.09.2007 calling upon the respondent/plaintiff to appear in the office of Sub Registrar on 10.10.2007 but to the said notice the respondent sent reply dated 18.10.2007 without specifying as to what documents were required by him for getting transaction of sale completed. It is further argued that the appellants sent rejoinder to the said reply on 07.11.2007 whereby the respondent was asked to come present in the office of Sub Registrar on 26.11.2007 but he did not turn up. It is vehemently argued that it was the respondent/plaintiff who was not ready and willing to perform his part of the agreement, therefore, the Courts have wrongly held him entitle to refund of Rs.4 lakhs paid as earnest money along with interest. Last submission made by counsel is that in case the judgments impugned are allowed to sustain, it would amount to putting premium over default of the respondent/plaintiff.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned and copy of agreement to sell as well as endorsement Ex.P3 dated 23.06.2006.

Indisputably, the appellants agreed to sell the suit property being attorney holders of original owners. The agreement was executed on 23.02.2006 and target date was 23.06.2006. On 23.06.2006, there was an endorsement made by the appellants that sale deed would be executed on completion of all legal documents. Meaning thereby that on 23.06.2006, the appellants were not possessed of certain documents required for the purpose of getting the sale deed executed and registered. No doubt, in the endorsement, it has not been specifically recorded with regard to the documents which were to be obtained by the appellants for making the

transaction complete. As has been rightly held by the Courts, in the notice dated 27.09.2007 there is no reference as to what documents had been obtained by the appellants in compliance with endorsement dated 23.06.2006 Ex.P3. Counsel for the appellants, in response to a query by the Court, is not in a position to pin-point the documents which were made available by the appellants subsequent to endorsement dated 23.06.2006 was made on the back of first page of agreement marked as Ex.P3. All these facts lead to an irresistible conclusion that the appellants did not prepare or procure those documents which were agreed to be procured by them for making them eligible to execute sale deed in favour of the respondent/plaintiff. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts asking the appellants to refund the amount of earnest money along with interest.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

FEBRUARY 7, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no